IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.758 OF 2003

Al-haj M.Mustafa Yakub Baig ..Petitioner

Vs.

Shri.Arif Shafiq Patel & Ors. ..Respondents

...

Mr.Rajeev L.Patil Advocate for Petitioner
None for Respondent Nos.1 to 8
Mr.V.B.Konde-Deshmukh A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : MARCH 29,2006

P.C.

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State. None appears for the Respondent Nos.1 to 8 though served.

2. Through this petition, petitioner had challenged the order dated 3.5.2003 passed by the learned Judicial Magistrate F.C. Panvel.

3. The complainant has filed application before the learned Magistrate seeking various prayers. One of the prayers was that contempt of Court proceedings should be initiated against sureties of

accused Nos.2, 3 and 5 as false salary certificates had been filed by them and false averments had been made by them in their affidavits relating to their salary, hence, action for contempt be issued against them. Moreover, as the sureties had made false statements, the bail granted to accused Nos.2, 3 and 5 be cancelled. The learned Magistrate rejected the said application by order dated 3rd May, 2003. Being aggrieved thereby, this petition has been preferred.

4. It is the case of the complainant that Mr.Salim Munir Shaikh who stood as surety for the accused no.3, has filed false and bogus salary certificate and affidavit and hence, action should be taken against him and the bail granted to the accused, should be cancelled.

5. It is contended by the learned advocate for the petitioner that as per the salary certificate of Mr.Salim Shaikh his gross salary is Rs.10,419/- and he has claimed in his affidavit that after deductions, he is getting net salary of Rs.9,005/-. However, the case of the complainant is that after deductions, the surety is getting net salary of

Rs.8805/-. There is no dispute as far as gross salary of this surety is concerned. It is admitted fact that the gross salary is Rs.10,419/- as stated by this surety in his affidavit. However, the dispute is only in relation to the sum received by surety Mr.Salim Shaikh after deductions. According to the complainant, sum received by surety is Rs.8805/- i.e. Rs.200/- less than the amount stated by the surety in his affidavit. The same was the case with the persons who stood as surety for accused nos.2 and 5.

6. The case of the sureties as well as accused is that the salary certificates filed on record are of August-2003 but the Bond Writer by mistake, mentioned different month. Thus, there is no evidence on record that sureties filed bogus salary certificates. There appears to be a bonafide mistake for which the sureties cannot be held responsible.

7. Moreover, even if the sum after deductions is seen, it is clear that sureties are solvent to pay the amount of the bond in case of default committed by the concerned accused. As far as the accused

persons are concerned, there is no grievance that there is violation of any of the conditions imposed upon them. Accused are attending the Court regularly. In this view of the matter, the order of the Magistrate is just, legal and proper. No interference is called for.

8. It may also be stated here that in para no.16 the learned Magistrate has stated that the applications were vexatious. It appears that there was a genuine mistake on the part of the complainant, hence, applications had been preferred by him before the learned Magistrate. In this view of the matter, it cannot be said that the applications were vexatious.

9. Writ petition is disposed of.

[V.K.TAHILRAMANI,J.]